

SUMMARY OF PROPOSED COMMITTEE DRAFT

BILL 10 (2011)

RELATING TO THE HONOLULU ETHICS COMMISSION

PROPOSED CD1:

- A. Amends Section 3-6.____(a)(3) to add the following: "including, but not limited to providing information to the appointing authority or council, in the case of a councilmember, in support of the commission's advisory opinion and recommended disciplinary action unless otherwise protected by law. If disciplinary action is taken against an employee the employee's exclusive representative shall also be entitled to the information, unless otherwise protected by law; or"
- B. Amends Section 3-6.____(a)(4) from the "Required by HRS Chapter 92F" to "Allowed or required by applicable law."



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RELATING TO THE HONOLULU ETHICS COMMISSION.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. The purpose of this ordinance is to conform the Revised Ordinances of Honolulu to the Revised Charter of the City and County of Honolulu 1973, relating to the Ethics Commission.

SECTION 2. Chapter 3, Article 6, Revised Ordinances of Honolulu 1990, is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

"Sec. 3-6. Definitions.

As used in this article:

"Advisory opinion" means a written or oral response by the commission or its staff to a request for advice or a complaint.

"Complaint" means a written or oral statement of facts or allegations submitted to, or initiated by, the commission that give rise to a reasonable inference that a violation of the standards of conduct by an officer or an employee has occurred.

"Employee" means the same as defined in Revised Charter Section 13-101.3.

"Formal advisory opinion" means a written opinion in response to request for advice or a complaint approved by an affirmative vote of the majority of the entire membership of the commission.

"Officer" means the same as defined in Revised Charter Section 13-101.4.

"Request for advice" means a written or oral request to the commission for an opinion whether the conduct of an officer or employee would be a violation of the standards of conduct.

"Standards of conduct" means the provisions regarding the ethical conduct stated in Article XI of the revised Charter and Article 8 of this chapter."

SECTION 3. Chapter 3, Article 6, Revised Ordinances of Honolulu 1990, is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:



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"Sec. 3-6. Confidentiality of commission records.

- (a) All advisory opinions, files, records, reports, writings, documents, exhibits, electronic records and other information prepared or received by the commission or its staff or consultants relating to a request for advice or a complaint shall be held in confidence and no information as to the contents thereof shall be disclosed, unless such disclosure is:
- (1) The result of the information being presented to or received by the commission at a hearing or meeting that is open to the public;
 - (2) Ordered by a court of competent jurisdiction;
 - (3) Reasonably required by the commission, its staff or consultant to investigate or otherwise discharge its duties regarding the request for advice or the complaint, including, but not limited to providing information to the appointing authority or council, in the case of a councilmember, in support of the commission's advisory opinion and recommended disciplinary action unless otherwise protected by law. If disciplinary action is taken against an employee the employee's exclusive representative shall also be entitled to the information, unless otherwise protected by law;
or
 - (4) Allowed or required by applicable law.
- (b) Any commission member, commission staff member or consultant who discloses information related to a request for advice or complaint, unless disclosure is allowed pursuant to subsection (a), shall be subject to the applicable provisions of Section 11-106 of the Revised Charter and section 3-8.5.
- (c) The disclosures of conflicts of interests as provided in the Revised Charter shall be made matters of public record at any time that such a conflict becomes apparent."

SECTION 4. Section 3-6.3, Revised Ordinances of Honolulu 1990 is amended to read as follows:

"Sec. 3-6.3 Powers, duties and functions.

- (a) The commission shall render advisory opinions at any time at the request of an officer or employee of the city involving the possible conflict of interest or unethical



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conduct on the part of or the solicitation, acceptance, or receipt of a gift by such officer or employee.

- (b) The commission shall also render advisory opinions in circumstances where there is alleged to be a conflict of interest or unethical conduct on the part of any employee or officer of the city within the scope of the revised charter and Article 8 of this chapter.
- (c) The commission shall have jurisdiction for purposes of investigation and taking appropriate action over a complaint or request for an advisory opinion alleging a violation of the standards of conduct established in Article XI of the revised charter or of Article 8 of this chapter by a current or former officer or employee that has been submitted to the ethics commission within six years after the alleged violation occurred. Any investigation commenced by the commission on its own initiative into an alleged violation of Article XI of the revised charter or of Article 8 of this chapter by a current or former officer or employee shall be commenced within six years after the alleged violation occurred.
- (d) The commission shall recommend to the appointing authority or the council, in the case of a councilmember, appropriate disciplinary action against officers and employees found to have violated the standards of conduct established in Article XI of the revised charter or Article 8 of this chapter.
- (e) The commission may impose civil fines as set forth in Section 3-8.5.
- (f) The commission may submit to the mayor and council recommendations and reports which it deems advisable and which pertain to the standards of conduct contained in Article XI of the revised charter, to the administration of said Article XI or to any other matter relating to the fostering and maintenance of ethical conduct.
- (g) The commission may initiate or make investigations and hold hearings.
- (h) The commission may subpoena witnesses, administer oaths and take testimony relating to matters before the commission and issue subpoenas for the production for examination of any books, papers or other documents relative to any matter under investigation or in question before the commission. [Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall be by formal resolution, supported by a vote of the majority of the members of the commission, defining the nature and scope of its inquiry.] The commission may exercise its subpoena power upon the signature of a subpoena by the chair of the commission, the vice chair, or by a vote of the majority of the members of the commission.



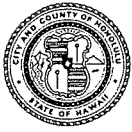
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- (i) The commission may, from time to time adopt, amend and repeal such rules and regulations, not inconsistent with the provisions herein and of Article 8 of this chapter, as in the judgment of the commission seem appropriate for the carrying out of the provisions herein and of Article 8 of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules and regulations, when approved, promulgated and filed as provided in HRS Chapter 91 shall have the force and effect of law.
- [(j)] Any commission member or commission staff, who divulges information concerning the allegation prior to the issuance of an advisory opinion by the commission, or if the investigation discloses that the advisory opinion should not be issued by the commission, any commission member or commission staff who, at any time, divulges any information concerning the original allegation, or divulges the contents of disclosures except as permitted by this article, shall, if found guilty, be subject to the applicable provisions of Section 11-106 of the revised charter.
- [(k)](i) The commission may disclose the name of any officer or employee who has been determined by the commission, following investigation and a hearing or opportunity for a hearing, to have violated any of the provisions of Article 8 of this chapter or of Article XI of the revised charter in accordance with HRS Chapter 92F.
- [(l)](k) The commission may submit information or records to another agency, an agency of the State of Hawaii, an agency of another state, or to an agency of the federal government, or a foreign law enforcement agency or authority as permitted under HRS Chapter 92F."

SECTION 5. Section 3-6.5, Revised Ordinances of Honolulu 1990 is amended to read as follows:

"Sec. 3-6.5 Requirements applicable to the rendering of advisory opinions.

- (a) Except in the case of a [written] request by the [elected or appointed] officer or employee concerned, the commission may for good cause refuse to entertain a request for [an advisory opinion.] advice or complaint. Without limiting the generality of the foregoing, the commission may refuse to entertain a request or complaint where: (1) the request or complaint is speculative or purely hypothetical and does not involve an actual situation or (2) the request or complaint is frivolous. [In no case, however, shall the commission entertain a request that is not in writing and not signed by the person making the request.]



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- (b) The commission shall acknowledge the receipt of the request in writing to the person submitting the request. If the request involves an employee or officer and the request is made by a person other than such employee or officer, a copy of the request shall be sent to the employee or officer so involved with the name of the person making the request deleted so that such person's name will not be disclosed.
- [(c)] All records, reports, writings, documents, exhibits and other evidence received by the commission shall be held in confidence and no information as to the contents thereof shall be disclosed unless such items are presented and received by the commission at a hearing or meeting that is open to the public.
- (d)][(c)] Within 30 days after a request for an opinion, or within 30 days after a hearing on any request shall have been concluded, whichever is later, the commission shall render its opinion in writing. All formal advisory opinions rendered by the commission shall be in writing and shall be published [and shall be] in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved[.] unless disclosure is in accordance with applicable law.
- [(e)][(d)] After an opinion has been rendered, the commission shall notify the appointing authority of the officer or employee involved or the council in the case of elected officials, of its decision and shall recommend appropriate disciplinary action against officers and employees found to have violated standards of conduct established by the revised charter or by ordinance. The appointing authority or the council shall take whatever action is deemed necessary, and report the action taken and the reasons for the action to the commission within 15 days after receiving the decision and recommendation of the commission. [The disclosures of conflicts of interests as provided in Revised Charter Section 11-103 shall be made matters of public record at any time that such conflict becomes apparent.]”

SECTION 6. Section 3-6.6, Revised Ordinances of Honolulu 1990 is amended to read as follows:

“Sec. 3-6.6 [Request] Requests for [opinions by officers or employees.] advice.

- (a) Any officer or employee may request an opinion from the commission relating to any situation involving such officer or employee which may give rise to the possibility of a conflict of interest under Revised Charter, Article XI. Any officer or employee also may request an opinion from the commission on a situation which may give rise to the possibility of unethical conduct under this article. Any officer



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or employee also may request an opinion from the commission relating to the solicitation, acceptance, or receipt of a gift.

- (b) [The request shall be in writing, shall set forth the pertinent facts and shall be signed by the officer or employee making the request.] The request for advice may be written or oral and shall set forth the pertinent facts, if known.
- [(c) The request shall be held in confidence and no disclosure thereof shall be made, except as provided herein.]”

SECTION 7. Section 3-6.7, Revised Ordinances of Honolulu 1990 is amended to read as follows:

“Sec. 3-6.7 [Requests by third parties.] Complaints.

- (a) [A request for an advisory opinion submitted by a person other than the officer or employee involved in the request shall be in writing and shall be signed by the person making the request; provided, that the name of the person making the request shall not be disclosed.] Any person may submit a written or oral complaint to the commission. Such request shall relate to an actual situation and shall set forth the pertinent facts if known, including the names of those involved[.] and the nature of the alleged acts or omissions.
- (b) Where the employee or officer involved in the request is not the person making the request, such employee or officer shall have an opportunity to respond in writing within 15 days after receipt of a copy of the request. The response may include a request for a hearing before the commission.
- (c) Where no hearing is requested by the officer or employee involved, the commission shall render its opinion on the basis of the information available; provided, that the commission may request for additional information when deemed necessary.
- (d) The commission shall, upon receipt of a request for a hearing within the period above referred to by the officer or employee involved, set a time and place for the hearing for the purpose of determining the facts. The person making the allegation and the employee or officer involved shall have the opportunity to appear at the hearing, alone or by counsel, and to present any and all evidence, including testimony and exhibits, which are relevant to the issue involved. No testimony shall be excluded, except for irrelevancy.



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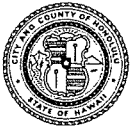
- (e) All meetings or hearings before the commission involving an alleged [conflict of interest of] violation of the standard of conduct by any employee or officer shall be held in executive session, provided that a public hearing may be held where such officer or employee[, alleged to have conflict of interest, consents thereto.] alleged to have violated the standards of conduct, consents thereto."

SECTION 8. Section 3-6.8, Revised Ordinances of Honolulu 1990, is repealed.

["Sec. 3-6.8 Applicability.

The provisions herein shall be applicable to officers and employees of the City and County of Honolulu and the terms "officers" and "employees" shall be given the meanings provided in Revised Charter Section 13-101.3, relative to "employees", and Revised Charter Section 13-101.4, relative to "officers"; provided, that the term "officers and employees" as used herein shall also include officers or employees under a personal service contract as prescribed in Revised Charter Sections 6-1103(f) and (g) and 6-1104(f), but excludes independent contractors."]

SECTION 9. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.



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SECTION 10. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Nestor Garcia (BR)

DATE OF INTRODUCTION:

February 28, 2011
Honolulu, Hawaii

_____ Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

PETER B. CARLISLE, Mayor
City and County of Honolulu